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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re FERNANDO JASSO,

F056709

On Habeas Corpus.

THE COURT*

ORIGINAL PROCEEDING; petition for writ of habeas corpus.

Fernando Jasso, in pro. per., for Petitioner.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney General, Stephen G. Herndon and Carlos A. Martinez, Deputy Attorneys General, for Respondent.

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On December 23, 2008, petitioner filed a petition for writ of habeas corpus seeking leave to file a belated notice of appeal. Petitioner claims that he asked counsel to file a notice of appeal on his behalf but that counsel failed to do so.

* Before Vartabedian, Acting P.J., Gomes, J. and Hill, J.

On January 28, 2009 and February 11, 2009, trial counsel filed declarations stating petitioner asked him to file a notice of appeal on petitioner's behalf and that he told petitioner he would review the case to determine if there was an issue to appeal. Although trial counsel states in his declarations that after review of the case he determined that there were no arguably meritorious appealable issues, the declarations do not reflect that counsel informed petitioner that no appeal would be filed.

On February 25, 2009, the Attorney General filed an informal response stating trial counsel never promised to file a notice of appeal and therefore petitioner never detrimentally relied on such a promise.

On March 20, 2009, this court issued an order to show cause. The order invited the Attorney General to submit the matter on the current record and without further proceedings.

On March 27, 2009, the Attorney General filed a letter brief stating a willingness to submit the matter on the current record and without further proceedings.

DISCUSSION

A notice of appeal must be filed within 60 days after the rendition of judgment. (Cal. Rules of Court, rule 8.308(a).) Although a criminal defendant has the burden of timely filing a notice of appeal, the burden may be delegated to trial counsel. (*In re Fountain* (1977) 74 Cal.App.3d 715, 719.) "A criminal defendant seeking relief from his default in failing to file a timely notice of appeal is entitled to such relief, absent waiver or estoppel due to delay, if he made a timely request of his trial attorney to file a notice of appeal, thereby placing the attorney under a duty to file it, instruct the defendant how to file, or secure other counsel for him [citation]; or if the attorney made a timely promise to file a notice of appeal, thereby invoking reasonable reliance on the part of the defendant [citation]." (*People v. Sanchez* (1969) 1 Cal.3d 496, 500.)

Petitioner asked counsel to file a notice of appeal on his behalf. Counsel failed to perfect the appeal in a timely manner. Consequently, petitioner is entitled to relief.

Petitioner is directed to cause a notice of appeal, and, if appropriate, request a certificate of probable cause, to be filed on or before April 20, 2009, in the Superior Court of Kern County action No. BF121138A.

Let a writ of habeas corpus issue directing the Clerk of the Superior Court of Kern County, if the Clerk receives said notice of appeal and request for a certificate of probable cause on or before April 20, 2009, to file the notice of appeal and the request for a certificate of probable cause, to treat them as being timely filed, and to proceed in accordance with the applicable rules of the California Rules of Court.